

Alabama Rules of Criminal Procedure

Rule 19. Trial.

Rule 19.1. Order of proceeding of trial.

The trial shall proceed in the following order unless with agreement of the parties the court shall direct otherwise:

(a) Witnesses who are present may be sworn and may be excused from the courtroom pursuant to Rule 9.3(a).

(b) The charge shall be read, and the plea of the defendant stated.

(c) The district attorney may make an opening statement, including a statement of what the state expects the evidence to show.

(d) The defendant may then make an opening statement, including a statement of what the defendant expects the evidence to show. The district attorney may be permitted a brief statement in rebuttal, in the court's discretion. If there are two (2) or more defendants, they shall proceed in the order of the filing of their respective charges, or if they are charged in the same instrument, then they shall proceed in the order appearing therein, unless they have agreed upon a different order.

(e) The district attorney shall offer evidence in support of the charge.

(f) The defendant may then offer evidence in defense.

(g) Evidence in rebuttal may then be offered.

(h) Before the jury retires to begin deliberation of the case, the court, upon a showing of good cause, may allow the case to be reopened. If either party is allowed to present further evidence, the other party may present evidence in response thereto.

(i) The parties may make arguments, the district attorney having the opening and closing. If after the opening argument the defendant declines to make argument, the district attorney shall not make further argument.

(j) The judge shall then charge the jury, as provided in Rule 21.

Committee Comments

There are no Alabama statutory provisions comparable to Rule 19.1. However, certain specific points are dealt with in Alabama case law.

Subsection (d) includes a provision specifying the order in which multiple defendants shall make their opening statements. It addresses the question more directly than does Rule 521, Unif.R.Crim.P., which generally leaves the question to the judge.

Under Alabama law, whether to allow later testimony that properly should have been presented in the case-in-chief is within the discretion of the court. E.g., *Martin v. State*, 51 Ala.App. 405, 286 So.2d 80 (Ala.Crim.App.1973); *Emerson v. State*, 281 Ala. 29, 198 So.2d 613 (1967). This Alabama rule is incorporated in subsection (h), which comes from Rule 521(5), Unif.R.Crim.P. Subsection (h) reflects the view that since the defendant is entitled to offer evidence in response to the district attorney's original evidence, the defendant should be allowed to do the same in response to later permitted state's evidence. Proper use of the pre-trial hearing provisions of these rules should operate to minimize this problem in all but extraordinary cases.